

Clerk of Courts Office
U.S. District Court
Middle District of Pennsylvania

October 8, 2010

Re: Supplemental filing.
Smart v. Folino
Case No. 10-cv-1447

Dear Clerk,

When I put together my brief in support of my petition for writ of Habeas Corpus Pursuant To 28 U.S.C. §2254, I inadvertently left out the Jurisdiction page and STATEMENT OF THE CASE. Enclosed for filing you will please find said pages. A copy of these pages has been sent to the District Attorney Office of Clinton County, Pennsylvania, under cover of this letter and Certificate Of Service.

Thank you for your immediate attention in this matter.

Very truly yours,

Fabian D. Smart, GC-2983

***NOTE:** The Statement OF THE CASE is also included.

cc: Clinton County District Attorney

**FILED
SCRANTON**

OCT 15 2010

PER

[Signature]
CLERK

STATEMENT OF THE CASE

STATEMENT OF JURISDICTION

The petitioner invokes this Honorable Court with jurisdiction pursuant to 28 U.S.C. §1651 and 28 U.S.C. §2254, which states:

(a)(1) by a person in custody pursuant to a judgment of a state court, for a determination that such custody is on violation of the Constitution, laws, or treaties of the United States...

STATEMENT OF THE CASE

In September and October of 2004, the petitioner was tried and convicted of murder of the first degree, conspiracy to commit murder of the first degree, kidnapping, and conspiracy to commit kidnapping, after a jury trial before the Honorable Richard N. Saxon. The petitioner was represented at trial and on appeal by Ronald C. Travis, Esquire, and Eric R. Lindhardt, Esquire. However, Ronald Pressley, Esquire, represented the petitioner during a portion of the pretrial proceedings.

Subsequently, on October 21, 2004, the petitioner was convicted and sentenced to a total term of life imprisonment. A timely notice of appeal was filed to the Superior Court of Pennsylvania, at docket Number 588 MDA 2005, which was affirmed on October 19, 2006 [913 A.2d 947]. The petitioner filed a timely Petition For Allowance of Appeal from the Order of the Superior Court, with the Supreme Court of Pennsylvania. On May 1, 2007, the Petition For Allowance of Appeal was denied. [923 A.2d 410].

On October 1, 2007, the petitioner filed a pro se petition seeking relief under the Post-Conviction Relief Act. David A. Strouse, Esquire, was appointed to represent him, and to file an amended petition. On January 25, 2008, counsel filed an amended PCRA petition. Two evidentiary hearings were held. One on February 26, 2008, and the other on March 17, 2008, before the Honorable President Judge J. Michael Williamson, of the Court of Common Pleas of Clinton County, Pennsylvania. However, Judge Williamson did not preside over the petitioner's jury trial. On both

occasions, the PCRA Court would not let a key witness testify to the facts alleged in the petitioner's petition. On March 18, 2008, the petitioner's PCRA petitioner was dismissed, and the petitioner filed a timely Notice Of Appeal to the Superior Court of Pennsylvania. Subsequently, the dismissal of the PCRA petition was affirmed on July 10, 2009.

On August 10, 2009, the petitioner filed a Petition For Allowance of Appeal to the Supreme Court of Pennsylvania. Subsequently, this was also denied on December 17, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Statement of Jurisdiction page has been served via first class prepaid U.S. Mail, by depositing the same into the institutional mail system at SCI Greene, Waynesburg, Pennsylvania, upon the Office of the District Attorney of Clinton County, Pennsylvania, 322 East Water Street, Lock Haven, PA 17745, on this the 8th day of October, 2010.

Respectfully submitted,



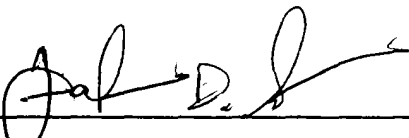
Fabian D. Smart, pro se

DOC No. GC-2983
175 Progress Drive
Waynesburg, PA 15370-8082

VERIFICATION

I hereby certify, verify or affirm that the foregoing Statement of Jurisdiction page and Certificate of Service are true and correct under the penalty of perjury per 28 U.S.C. §1746.

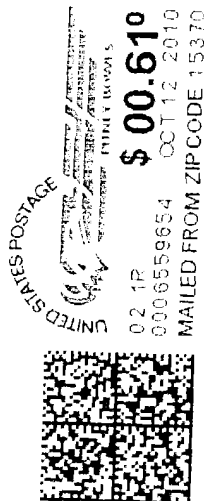
Date: October 8, 2010



Fabian D. Smart, pro se

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Waynesburg, PA 15370



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MIDDLE DISTRICT OF PENNSYLVANIA
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